of the QDOT assets on the spouse's death;

(2) In computing the second limitation as described in section 2013(c) and §20.2013–3, the value of the property transferred to the decedent (as defined in section 2013(d) and §20.2013–4) is deemed to be the value of the QDOT assets on the date of death of the surviving spouse. The value as so determined is not reduced by the section 2056A estate tax imposed at the time of the spouse's death; and

(3) The amount of the credit is determined without regard to the percentage limitations contained in section 2013(a).

(b) *Property not subject to QDOT election.* If property includible in a decedent's gross estate passes to a noncitizen surviving spouse (the transferee) and no deduction is allowed to the decedent's estate for that interest in property under section 2056(a) solely because the requirements of section 2056(d)(2) are not satisfied, and the transferee spouse dies with an estate that is subject to tax under section 2001 or 2101, as the case may be, any credit for tax on prior transfers allowable to the estate of the transferee spouse under section 2013 with respect to such interest in property is determined in accordance with the rules of section 2013 and the regulations thereunder, except that the amount of the credit is determined without regard to the percentage limitations contained in section 2013(a).

(c) *Example.* The application of this section may be illustrated by the following example:

Example. The facts are the same as in §20.2056A–6, *Example 2*(ii). *D*, a United States citizen, dies in 1994, a resident of State X, with a gross estate of $2,000,000. Under *D*'s will, a pecuniary bequest of $700,000 passes to a QDOT for the benefit of *D*'s spouse *S*, who is a resident but not a citizen of the United States. *S* dies in 1997 at which time *S* is still a resident of the United States and the value of the assets of the QDOT is $800,000. There were no taxable events during *S*'s lifetime. An estate tax of $304,800 is imposed under section 2056A(b)(1)(B). *S*'s taxable estate, including the value of the QDOT ($800,000), is $1,500,000.

(i) Under paragraph (a)(1) of this section, the first limitation for purposes of section 2013(b) is $304,800, the amount of the section 2056A estate tax.

(ii) Under paragraph (a)(2) of this section, the second limitation for purposes of section 2013(c) is computed as follows:

(A) *S*'s net estate tax payable under §20.2013–3(a)(1), as modified under paragraph (a)(2) of this section, is computed as follows:

Taxable estate		$1,500,000
Gross estate tax		555,800
Less: Unified credit	$192,800	
Credit for state death taxes	64,400	257,200
Pre-2013 net estate tax payable		$298,600

(B) *S*'s net estate tax payable under §20.2013–3(a)(2), as modified under paragraph (a)(2) of this section, is computed as follows:

Taxable estate		$700,000
Gross estate tax		229,800
Less: Unified credit	$192,800	
Credit for state death taxes	18,000	210,800
Net tax payable		$19,000
(C) *Second Limitation:*		
Paragraph (ii)(A) of this *Example*	$298,600	
Less: Paragraph (ii)(B) of this *Example*	19,000	
		$279,600

(iii) Credit for tax on prior transfers = $279,600 (lesser of paragraphs (i) or (ii) of this *Example*.

[T.D. 8612, 60 FR 43549, Aug. 22, 1995]

§20.2056A–8 Special rules for joint property.

(a) *Inclusion in gross estate*—(1) *General rule.* If property is held by the decedent and the surviving spouse of the decedent as joint tenants with right of survivorship, or as tenants by the entirety, and the surviving spouse is not a United States citizen (or treated as a United States citizen) at the time of the decedent's death, the property is subject to inclusion in the decedent's gross estate in accordance with the rules of section 2040(a) (general rule for includibility of joint interests), and section 2040(b) (special rule for includibility of certain joint interests of husbands and wives) does not apply. Accordingly, the rules contained in section 2040(a) and §20.2040–1 govern the extent to which such joint interests are includible in the gross estate of a decedent who was a citizen or resident of the United States. Under §20.2040–1(a)(2), the entire value of jointly held property is included in the decedent's gross estate unless the executor submits facts sufficient to show that property was not entirely acquired with consideration furnished by

the decedent, or was acquired by the decedent and the other joint owner by gift, bequest, devise or inheritance. If the decedent is a nonresident not a citizen of the United States, the rules of this paragraph (a)(1) apply pursuant to sections 2103, 2031, 2040(a), and 2056(d)(1)(B).

(2) *Consideration furnished by surviving spouse.* For purposes of applying section 2040(a), in determining the amount of consideration furnished by the surviving spouse, any consideration furnished by the decedent with respect to the property before July 14, 1988, is treated as consideration furnished by the surviving spouse to the extent that the consideration was treated as a gift to the spouse under section 2511, or to the extent that the decedent elected to treat the transfer as a gift to the spouse under section 2515 (to the extent applicable). For purposes of determining whether the consideration was a gift by the decedent under section 2511, it is presumed that the decedent was a citizen of the United States at the time the consideration was so furnished to the spouse. The special rule of this paragraph (a)(2) is applicable only if the donor spouse predeceases the donee spouse and not if the donee spouse predeceases the donor spouse. In cases where the donee spouse predeceases the donor spouse, any portion of the consideration treated as a gift to the donee spouse/decedent on the creation of the tenancy (or subsequently thereafter), regardless of the date the tenancy was created, is not treated as consideration furnished by the donee spouse/decedent for purposes of section 2040(a).

(3) *Amount allowed to be transferred to QDOT.* If, as a result of the application of the rules described above, only a portion of the value of a jointly-held property interest is includible in a decedent's gross estate, only that portion that is so includible may be transferred to a QDOT under section 2056(d)(2). See § 20.2056A–4(b)(1) and (d), *Example 3.*

(b) *Surviving spouse becomes citizen.* Paragraph (a) of this section does not apply if the surviving spouse meets the requirements of section 2056(d)(4). For the definition of resident in applying section 2056(d)(4), see § 20.0–1(b).

(c) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. In 1987, *D*, a United States citizen, purchases real property and takes title in the names of *D* and *S*, *D*'s spouse (a noncitizen, but a United States resident), as joint tenants with right of survivorship. In accordance with § 25.2511–1(h)(5) of this chapter, one-half of the value of the property is a gift to *S*. *D* dies in 1995. Because *S* is not a United States citizen, the provisions of section 2040(a) are determinative of the extent to which the real property is includible in *D*'s gross estate. Because the joint tenancy was established before July 14, 1988, and under the applicable provisions of the Internal Revenue Code and regulations the transfer was treated as a gift of one-half of the property, one-half of the value of the property is deemed attributable to consideration furnished by *S* for purposes of section 2040(a). Accordingly, only one-half of the value of the property is includible in *D*'s gross estate under section 2040(a).

Example 2. The facts are the same as in *Example 1*, except that *S* dies in 1995 survived by *D* who is not a citizen of the United States. For purposes of applying section 2040(a), *D*'s gift to *S* on the creation of the tenancy is not treated as consideration furnished by *S* toward the acquisition of the property. Accordingly, since *S* made no other contributions with respect to the property, no portion of the property is includible in *S*'s gross estate.

Example 3. The facts are the same as in *Example 1*, except that *D* and *S* purchase real property in 1990 making the down payment with funds from a joint bank account. All subsequent mortgage payments and improvements are paid from the joint bank account. The only funds deposited in the joint bank account are the earnings of *D* and *S*. It is established that *D* earned approximately 60% of the funds and *S* earned approximately 40% of the funds. *D* dies in 1995. The establishment of *S*'s contribution to the joint bank account is sufficient to show that *S* contributed 40% of the consideration for the property. Thus, under paragraph § 20.2040–1(a)(2), 60% of the value of the property is includible in *D*'s gross estate.

[T.D. 8612, 60 FR 43549, Aug. 22, 1995]

§ 20.2056A–9 Designated Filer.

Section 2056A(b)(2)(C) provides special rules where more than one QDOT is established with respect to a decedent. The designation of a person responsible for filing a return under section 2056A(b)(2)(C)(i) (the Designated Filer) must be made on the decedent's federal estate tax return, or on the first Form 706–QDT that is due and is